Supreme Court, U. S.
FILED
JUL 25 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors

Appellees.

On Appeal from the Supreme Court of Arizona

BRIEF FOR MARICOPA COUNTY

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I STATEMENT OF THE CASE

Appellees accept Appellants' statement of the Case and Question Presented as set forth in their brief.

II SUMMARY OF ARGUMENTS

Appellees respectfully submit that the Arizona durational residence statute, prescribing a 12 month period of County residence as a condition of receiving medical care at County expense is a valid exercise of the legislative power of the State of Arizona. It differs in two respects from the durational residence statute declared unconstitutional by the Court in the case of Shapiro vs. Thompson 394 US 618, 89 S.Ct. 1322, 22 L.Ed. 2d 600 (1969).

First, the statute does not constitute an impediment to interstate travel because the services and benefits sought do not threaten the newcomer's physical survival.

Second, the statute promotes a compelling State interest because the added cost of providing medical care to new residents at County expense threatens the fiscal integrity of the State's Counties.

III ARGUMENT

THE DURATIONAL RESIDENCE STATUTE FOR TREATMENT AT THE COUNTY HOSPITAL DOES NOT HAVE A CHILLING EFFECT ON THE RIGHT OF INTERSTATE TRAVEL.

Appellants rely most heavily on the case of Shapiro v. Thompson, 394 US 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) to support their contention that the statute is unconstitutional.

In the Shapiro case, the Supreme Court of the United States held that it violated the Equal Protection clause of the 14th Amendment to the United States Constitution for the State of Connecticut to impose a one year residence requirement for eligibility for general welfare. However, in his written opinion Justice Brennan said:

> "We imply no view of the validity of waiting period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." Shapiro v. Thompson, 394 U.S. at 638, footnote 21, emphasis supplied.

Simply stated, the decision of the U.S. Supreme Court in the Shapiro case, supra, is that durational residence requirements of the type herein involved will be upheld only if they do not constitute an impediment to the constitutional right of interstate travel, or alternatively, if they promote a compelling state interest.

In the Shapiro case, supra, the Court found that durational residence requirements for eligibility for welfare did constitute such an impediment and did not promote any compelling state interest. In the instant case the Court is concerned solely with the constitutionality of A.R.S. 11-297, creating a durational residence requirement for non-emergency medical services at public expense.

Appellees respectfully submit that ineligibility for non-emergency medical services at public expense does not constitute an impediment to the

constitutional right of interstate travel. As the Court noted in the Shapiro case, supra, a person moving to another state, if ineligible for welfare during the first year of his residence, may find that his very existence is threatened. If he is unable to obtain food, clothing and shelter essential to his existence, he will not survive. In the Shapiro case, supra, the Court said:

> "An indigent who desires to migrate, resettle, find a new job, start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute." Shapiro v. Thompson 394 US at 629.

A person ineligible for non-emergency medical services at public expense does not find his existence likewise threatened. The nature and extent of the non-emergency public health facilities is merely a matter to be considered along with quality of schools, condition of the local economy, weather, level of taxation, quality of police and fire protection and many other matters. Ultimately every public activity within a state can be considered to have some effect on the desirability of a state for purpose of immigration by residents of other states. It is necessary in determining whether or not a statute constitutes an impediment to the right of interstate travel for the court to employ a rule of reason. A statute serving a legitimate public purpose which does not have a demonstrably chilling effect on the right to interstate travel does not fall within the category struck down by the Court in the Shapiro case.

Appellees respectfully submit that A.R.S. 11-297 does not have such an effect. A newcomer to the state remains eligible for emergency services necessary for the preservation of life or limb.

The durational residence requirement of issue in this case resembles more the one year residence requirement for reduced University tuition upheld by this Court in Starns v. Malkerson 326 F. Supp. 234, (D. Minn. 1970) aff'd. 401 U.S. 985 (1970) than it does the life threatening requirement struck down by the Court in Shapiro v. Thompson op. cit. In that case, the District Court distinguished the right to receive reduced tuition from the right to receive direct welfare benefits in two respects: the requirement was not part of a concerted plan to discourage newcomers from entering the State, and the requirement did not deny the necessities of life to needy residents. Each of the saving features found by the District Court and upheld by this Court is present in this case.

Appellants conceded that they could not demonstrate by statistics that the durational residence statute had deterred newcomers from moving into the State. The only conclusion one can draw from the statistics of the U.S. Bureau of Census, mentioned by Appellants on page 25 of their brief, is that immigration to the state has occurred at an unusually high rate and the durational residence statute has had little if any impact on that immigration. The thirty-six year old memorial of the Arizona legislature relied upon by both Appellants and Amicus Curiae as evidence of an unwholesome desire to exclude the needy and oppressed exhibits no such intent, but only a commendable concern for their well-being and an honest recognition of the limited resources of a State then underpopulated and underdeveloped.

A contrary legislative intent can be found in Arizona Revised Statutes 11-259, providing as follows:

A.R.S. § 11-259 County Immigration Commissioner

"A. The board may appoint a county commissioner of immigration who shall hold office

for two years and shall receive an annual salary not exceeding six hundred dollars. The commissioner shall:

1. Provide information requested by persons desiring to immigrate to the county or make investments therein.

2. Correspond with immigration bureaus, chambers of commerce, tourists bureaus or other commercial bodies, and provide data for the guidance of prospective immigrants or tourists.

3. Furnish reliable information regarding localities in the county where the settler or tourist may choose a home or make investments.

4. Issue maps and pamphlets on the resources of the county.

5. Promote tourist travel or the investment of capital, and distribute such documents to insure their most useful circulation.

6. Assist nonprofit tourist attractions organized pursuant to § 10-451.

B. The commissioner may hire necessary clerks, prescribe their duties and fix their compensation. Such expenditures shall be first authorized by the board when approving the annual budget, and when so authorized shall be included in the amount to be collected by the annual county tax levy.

C. Counties of the first class having a population of one hundred thousand or over, as determined by the last official census of the United States, may expend a

further sum not exceeding two hundred thousand dollars annually for the purposes prescribed in this section.

D. Counties of the first class having a population of less than one hundred thousand, as determined by the last official census of the United States, may expend a further sum not exceeding fifty thousand dollars annually for the purposes prescribed in this section.

E. Counties of the second class may expend a sum not exceeding ten thousand dollars annually for the purposes prescribed in this section.

F. Counties of the third class may expend a sum not exceeding five thousand dollars annually for the purposes prescribed in this section. As amended Laws 1958, Ch.37, § 1; Laws 1968, Ch.109, § 1."

The manifest intention of the Arizona legislature, as shown by A.R.S. 11-259 is to attract and welcome newcomers to the State, not exclude them with discriminatory legislation, as was the case in Shapiro v. Thompson, op. cit.

Thus here, as in Starns v. Malkerson, op. cit. the durational residence statute in question is distinguishable from the invidious classification declared unconstitutional by this Court in that it shows no intent to discourage immigration and the exercise of the right of interstate travel.

The second circumstance, cited by the District Court and affirmed by this Court as a criterion, which distinguishes the present case from Shapiro v. Thompson, is that the benefits withheld are not necessities of life. It is difficult to deny that the nature and quality of one's life can be substantially improved by a University education, and

that some persons may be delayed by one year in obtaining such an education by durational residence requirements. Nevertheless, this circumstance was not found to be sufficiently compelling to deter the exercise of the right of interstate travel. Precisely the same may be said of the Appellant Evaro. Appellees do not deny that he experienced discomfort if he was unable to find other medical resources during the year that he had to wait to be eligible to receive medical care at public expense. Nevertheless, his discomfort was not life threatening. Appendix p. 9. If his discomfort became life threatening, he became eligible for treatment under the very statute which Appellants attack as unconstitutional.

Appellees concede that under the doctrine of Shapiro v. Thompson, the State of Arizona may not deny to new residents of the State medical services necessary to preserve their life or limb. The statute involved in this case expressly permits such treatment to be made to any person, regardless of the term of his residence, if any, in the State. The statute provides:

A.R.S. § 11-297. Hospital treatment; application; affidavit

"A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low in-

come without sufficient funds to provide himself necessary hospitalization and medical care, and that he has been a resident of the county for the preceding twelve months.

B. No person shall be admitted to the hospital or receive relief without an order from a member of the board.

C. Any person who files a false or untrue statement with the board or a member thereof for the purpose of obtaining hospitalization, medical care or outpatient relief for himself, shall be guilty of a misdemeanor. As amended Laws 1968, Ch.125, § 1; Laws 1972, Ch.142, § 13." (Emphasis supplied)

The California Court of Appeals considered the application of the Shapiro case to durational residence requirements and came to the same conclusion as the United States District Court and this Court in Starns v. Malkerson, op. cit. In Kirk v. Board of Regents of Univ. of Cal., 273 Cal. App.2d 430, 78 Cal.Rptr. 260 (1969), appeal dismissed, 396 U.S. 554, the California Court said:

"While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. Shapiro involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in Shapiro could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed institutions of higher learning do not involve similar risks." 78 Cal.Rptr. at 267.

THE ARIZONA DURATIONAL RESIDENCE STATUTE PROMOTES A COMPELLING STATE INTEREST.

The Court in Shapiro said that "fiscal expediency" does not constitute a compelling purpose for imposing durational residence requirements. However, the exhibits shown in the Appendix demonstrate that the annual cost of furnishing medical care to recently arrived indigent residents of the County would be approximately $2,500,000, causing an increase of 3.27% in the entire County budget, an increase of 13.3% in the Hospital budget, and an 8.45% increase in the County's property tax rate, a raise of 18 cents from $2.13 to $2.31 per hundred dollars of assessed valuation.

Appellees respectfully submit that an increase in the level of public expenditures of this magnitude goes beyond mere "fiscal expediency" and becomes a matter of critical public importance. The ability of the taxpayers of Arizona to pay ever increasing property taxes is limited. An increase of this magnitude could adversely affect the economy of the State and put the ownership of their homes beyond the reach of many citizens. New industry could be deterred from relocating in the State, and the net result of such a major increase in property taxes could be a chilling effect on the right of interstate travel hugely exceeding in impact the alleged impediment with which we are dealing.

Appellees concede that they could finance such medical care by taking an equivalent amount from the budgets of the Sheriff, the County Attorney, the Courts and other essential offices supported by local taxes. Obviously, this is not a realistic alternative. Newcomer and established residents alike depend on these public offices for the preservation of an orderly free society in which they may pursue their individual goals.

Appellees recognize the argument that the de-

cision of the Supreme Court affects only the division of welfare funds among the persons entitled thereto and does not obligate the states to appropriate additional funds. In the case of welfare payments there might be some validity to this argument; in the case of medical services furnished at public expense, it is grotesque to suggest that the County should furnish medical services to a larger number of people by reducing the quality of the service furnished and thereby deny to all persons medical facilities adequate to their needs.

Appellants and Amicus Curiae attempt to diminish the impact of the fugures quoted above by attacking their precision or denying the importance of an increase of this magnitude in the taxes which the Counties may impose on their residents on top of Federal and State Income Taxes, Municipal and State sales and property taxes, school district taxes, Federal excise taxes, and other exactions. Appellees concede that their estimates are rough and may be understated or overstated. Appellants and Amicus Curiae have offered no others. The essential fact remains: the annual exaction of two and one half million dollars, more or less, from a very limited tax base threatens the economic welfare of the entire County and jeopardizes the provision of other services, equally vital to the common welfare of old and new residents of the County. Appellees respectfully submit that the State has a compelling interest in preventing this from occurring.

APPELLANTS' AUTHORITIES

Appellees will not burden the Court with an exhaustive commentary on every citation that Appellants have managed to insert in their brief. The cases relied upon most heavily by Appellants do require some comment.

Valenciano v. Bateman, 323 F. Supp. 600 (D. Ariz.

1971) is exactly contrary to the holding to the Arizona Supreme Court in the instant case. It was to resolve this conflict in Federal and State interpretations of the United States Constitution that Appellees requested this Court to accept jurisdiction of this appeal. With all respect for the wisdom of the United States District Court, Appellees would point out that the Court in that case apparently was not asked to consider the availability of emergency medical care to all indigent newcomers in Arizona and the financial impact of its ruling on the Counties of the State, for its decision does not discuss these issues at length.

Vaughan v. Bower, 313 F. Supp. 37, aff'd mem., 400 U.S. 884 (1970) dealt with the power of the Superintendent of the Arizona State Hospital to transport a newly arrived resident to her state of origin. A.R.S. 36-522, authorized the superintendent to evict from the State of Arizona an inmate of his institution who had not resided in the State for one year. This act, known to veteran criminal lawyers as a "float", is an obvious direct invasion of the right of interstate travel.

Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed. 2d 534 (1971) dealt with a fifteen year residency requirement for receiving general welfare if the applicant was an alien. The sole justification for the requirement was citizenship. The benefit withheld was necessary for the otherwise eligible applicant to survive, and no compelling financial interest was shown. Nothing in that case refutes the Appellees' position.

Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed. 2d 287 (1970) dealt with the point in time at which a state was obliged to provide a hearing guaranteed by the Fifth and Fourteenth Amendments before depriving a welfare applicant of a benefit that may have been necessary for her physical survival. It differed from the present

case in that the applicant's vital needs were involved and there was a direct invasion of a right expressly granted to all inhabitants of the land.

Appellants and Amicus Curiae have dwelt at length upon the wisdom of the Arizona durational residence statute and system of financing medical care of the indigent. They contend that the legislature of the State could find better ways to deal with its problem. Such arguments are best answered by citing the opinion of this Court in Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L.Ed. 2d 491 (1970). In that case, the Court said:

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." Dandridge v. Williams 397 U.S. at 487. Citations omitted.

Respectfully submitted,

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July, 1973